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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,958	10/21/2003	Francois Cottard	06028.0029-00	3313

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EXAMINER	
ELHILO, EISA B	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 11/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/688,958	COTTARD ET AL.	
	Examiner	Art Unit	
	Eisa B Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-59* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-59* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *10/21/2004*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1-59 are pending in this application.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-48 and 50-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 50-100 of copending Applications No. 10/470;131, over claims 1-17, 23-48 and 50-56 of copending Application No. 10/690,696 and over claims 1-17, 27-51 and 53-59 of copending Application No. 10/688,970. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending Applications No. 10/470,131, 10/690,696 and 10/688, 970, teach and disclose similar hair dyeing compositions comprising at least one oxidation base and at least one cationic poly(vinylactum) polymer in the claimed amounts as claimed in claims 1-18 (see claims 50-63 of the copending Application No. 10/470,131, claims 1-17 of the copending Application No. 10/690,696 and claims 1-17 of the copending Application No. 10/688,970), oxidation bases, couplers, direct dyes, additional polymers, surfactants, thickening agents, reducing agents and oxidizing agents in the claimed amounts as claimed in claims 19-48 (see

claims 64-93 of the copending Application No. 10/470,131, claims 23-48 of the copending Application No. 10/690,696 and claims 27-51 of the copending Application No. 10/688,970), method for dyeing hair and multi-compartment devices as claimed in claims 50-59 (see claims 94-100 of the copending Application No. 10/470,131, claims 50-56 of the copending Application No. 10/690,696 and claims 53-59 of the copending Application No. 10/688,970). Therefore, this is an obvious formulation.

Although, the claims of the copending Applications No. 10/470131, 10/690,696 and 10/688970, teach and disclose similar hair dyeing compositions, they are not identical to the instant claims because the claims of the copending Application No. 10/470131 do not require at least one oxidation dye in the form of a sulfate form, the claims of the copending Application No. 10/690,696, require at least one fatty acid chosen from C10-C14 fatty acids and claims of the copending Application No. 10/688,970, require at least one C10-C14 fatty alcohol, while the instant claims do require specific oxidation dye and also do not require at least fatty alcohol or at least fatty acid to be presented in the dyeing composition as claimed. Therefore, the conflicting claims are not identical.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

2. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 89 of U.S. Patent No. 6,602,303 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 89 of the US. Patent No. 6,602,303 B2, teach and disclose similar hair dyeing compositions comprising at least one oxidation base and at least one cationic poly(vinylactum)

polymer as claimed in claim 1 (see claim 89 of the US. Patent No. 6,602,303 B2). Therefore, this is an obvious formulation.

Although, claim 89 of the US. Patent No. 6,602,303 B2, teaches and discloses similar hair dyeing composition, it is not identical to the instant claim because claim 89 of the US. Patent No. 6,602,303 B2, requires a combination comprising at least one compound chosen from oxyalkylenated fatty alcohols and glycerolated fatty alcohols and at least one hydrogenated solvent having a molecular weight of less than 250 to be presented in the composition, while the instant claim 1does not require the combination of fatty alcohols and the solvent to be presented in the dyeing composition. Therefore, the conflicting claims are not identical.

Claim Rejections - 35 USC § 102

3 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-16, 19-20, 24-40, 43-51 and 53-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Laurent et al. (US 2002/0046431 A1).

Laurent et al. (US' 431 A1) teaches a hair dyeing composition comprising at least one oxidation dye and its sulfate as acid addition salt (see page 10, paragraph, 0266 and page 13, paragraph, 0316) and cationic poly(vinyllactam) polymers formed from a) monomers of vinyllactam and monomers of alkyvinyllactum monomers, at least one monomer chosen from formulae (Ib) and (IIb) which are identical to the claimed formulae (Ia) and (Ib) as claimed in

claims 1-2 and 6-9 (see page 6, paragraphs, 0155-0166 and page 7, paragraphs, 0167-0177), wherein the monomer is a compound having a formula (IVb) which is identical to the claimed formula (III) as claimed in claim 4 (see page 7, paragraphs, 0178-0183), wherein the monomer of formula (IVb) is vinylpyrrolidone as claimed in claim 5 (see page, 7, paragraph, 0184), wherein the composition also comprises additional monomers chosen from cationic and nonionic monomers as claimed in claim 10 (see page 7, paragraph, 0185), wherein the composition further, comprises terpolymer having a) monomers (IVb), b) monomer (Ib) and c) monomer (IIb) wherein the monomers are identical to the claimed monomers as claimed in claim 11 (see page 7, paragraphs, 0186 –0187 and paragraphs 0188-0189), wherein the terpolymer comprises by weight, 40 to 95% of monomer (a), 0.25 to 50% of monomer (b) and 0.1 to 55% of monomer (c) as claimed in claim 12 (see page 7, paragraph, 0190), wherein the cationic poly(vinylactams) is vinylpyrrolidone/dimethylaminopropylmethacrylamine/dodecyldimethylmethacrylamidopropylammonium tosylate as claimed in claim 13 (see page 7, paragraph, 0191), wherein the weight-average molecular mass of the cationic poly(vinyllactams) ranges from 500 to 20 000 000, 200 000 to 2,000 000 or 400 000 to 800 000 as claimed in claims 14-16 (see page 7, paragraph, 0192), wherein the composition comprises at least one oxidation base of N,N-bis(β-hydroxyethyl)-para-phenylenediamine as claimed in claims 19-20 (see page 11, paragraph, 0274), at least one oxidation base of para-phenylenediamine in the amount of 0.0005 to 12% which within the claimed range as claimed in claim 27 (see page 13, paragraph, 0312), couplers of meta-phenylenediamines in the amount of 0.0001 to 10% which is within the claimed range as claimed in claims 28-29 (see page 13, paragraphs, 0314 and 0315), hydrochlorides and hydrobromides as acid addition salts of oxidation bases as claimed in claims 30-31 (see page 13,

paragraph, 0316), direct dyes as claimed in claim 32 (see page 13, paragraph, 0317), additional cationic amphoteric polymers having the formulae (W) and (U) which are identical to the claimed formulae (W) and (U) as claimed in claims 33-35 (see page 17, formulae (W) and (U)), at least one amphoteric polymer is a copolymer comprising as monomer at least acrylic acid and dimethyldiallylammonium salt as claimed in claim 36 (see page 27, claim 61), wherein the additional polymers present in the amounts of 0.01 to 10%, 0.05 to 5% and 0.1 to 3% as claimed in claims 37-39 (see page 17, paragraph, 0396), at least one surfactant chosen from cationic, anionic and amphiphilic surfactants and thickeners as claimed in claims 40 and 43 (see page 21, paragraph, 0466), at least one reducing agent in the amount of 0.05 to 3% as claimed in claim 44 (see page 21, paragraph, 0467), at least one oxidizing agent such as hydrogen peroxide in the aqueous solution of 1-40 volumes as claimed in claims 45-48 (see page 21, paragraph, 0469), wherein the dyeing composition has a pH in the range of 6 to 11 which within the claimed range as claimed in claim 49 (see page 21, paragraph, 0471). Laurent et al. (US' 431 A1) also teaches a process for dyeing hair comprising applying to the hair the dyeing composition as described above and wherein the dyeing composition is mixed with the oxidizing composition before the application as claimed in claims 50-51 and 53 (see page 22, paragraph, 0477). Laurent et al. (US' 431 A1) further, teaches multi compartment devices for holding the dyeing composition as claimed in claims 54-55 (see page 27, claim 66). Laurent et al. (US' 431) teaches all the limitations of the instant claims. Hence, the claimed are anticipated by Laurent et al. (US' 431).

Claim Rejections - 35 USC § 103

4 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3, 17-18, 21-23, 41-42, 52 and 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A1).

The disclosure of Laurent et al. (US' 431 A1) as described above, does not teach or disclose the percentage amounts of the oxidation dyes in the form of a sulfate, the amounts of cationic amphiphilic polymers of poly(vinyllactams) and the amount of surfactants. Further, the reference does not teach or disclose a three multi-compartment device as claimed.

However, it would have been obvious to one having ordinary in the art at the time the invention was made to formulate such a composition by optimizing the amounts of the oxidation dyes, cationic amphiphilic polymers and surfactants in the dyeing composition with the reasonable expectation of success, because the reference teaches a dyeing composition comprising at least one cationic amphiphilic polymers in the amount of 0.01 to 3% by wt. (see page 26, claim 45) and effective amounts of at least one agent conventionally used in oxidation dyeing such as at least one adjuvant including surfactants (see page 21, paragraph, 0466), and, thus, a person of the ordinary skill in the art would be motivated to optimize the amounts of these dyeing ingredients in order to get the maximum effective amounts of these ingredients in the dyeing composition and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claims 57-59, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a multi-compartment device comprising three compartments for holding and maintaining the dyeing composition because the reference clearly

teaches a device or kit for dyeing hair comprising at least two compartments (see page 27, claim 66) which implies that more than two compartments may be used to hold and maintain the dyeing composition, and, thus, a person of the ordinary skill in the art would be motivated to use any number of compartments including those claimed and would expect such a device would be suitable for holding the dyeing ingredients as those claimed, absent unexpected results.

Conclusion

The references listed on from 1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in the rejection above. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. (FR 2820032) and (EP 1179 336 A1).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eisa Elhilo

Patent Examiner
Art Unit 1751

November 7, 2004